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No. 89-887

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

SOUTHERN OHIO STATE EXECUTIVE OFFICES OF CHURCH OF GOD AND DR. HAROLD B. THOMPSON, SR., STATE OVERSEER,

Petitioners,

v.

FAIRBORN CHURCH OF GOD AND REV. ANCIL CARTER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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QUESTION PRESENTED

Whether the Ohio Courts' determination of a dispute between a local church and a state-wide board of the denomination to which it belonged, concerning ownership of property located in Ohio, by applying neutral principles of Ohio law, contravened the First Amendment right to free exercise of religion where neither the dispute nor its resolution entailed any question of or required any determination of religious doctrine, church polity or tenets of faith.

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Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Respondents FAIRBORN CHURCH OF GOD and REV. ANCIL CARTER respectfully pray that the petition for a writ of certiorari to review the judgment of the Supreme Court of Ohio entered in this proceeding on September 6, 1989, be denied.

OPINIONS BELOW

The unpublished decision of the Supreme Court of Ohio, dated September 6, 1989, dismissed Petitioners' appeal on the ground that it presented no substantial constitutional question. (That decision is annexed as Appendix I to the Petition for a Writ of Certiorari).

The Court of Appeals of Ohio, in an unpublished Opinion dated March 29, 1989, affirmed the Trial Court's grant of summary judgment for Respondents. (That Opinion is annexed as Appendix II to the Petition for a Writ of Certiorari). The Court of Common Pleas of Greene County, Ohio granted summary judgment for Respondents in an Opinion which is also unpublished. (That Opinion is annexed as Appendix III to the Petition for a Writ of Certiorari).

JURISDICTION

The jurisdiction of this Court is invoked by Petitioners under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioners contend that this case involves the First and Fourteenth Amendments to the United States Constitution. Respondents dispute that contention. The resolution of the property dispute at issue between the parties does not raise First Amendment concerns.

STATEMENT OF THE CASE

This case involves a property dispute between Respondent, an Ohio landowner, which, according to Ohio law, holds the property in fee simple in its own name, and Petitioner, which claims to have an interest in that property. Court of Appeals Opinion, Slip Op., at Appendix p. 9.[1] Respondent Fairborn Church of God is an Ohio non-profit corporation organized in

[1] All citations to the Opinions of the Courts below are hereafter cited to the pages of the Appendix to the Petition for Writ of Certiorari as "App., p. ___."

1963.[2] Its pastor is Respondent Rev. Ancil Carter. App., pp. 10-11. Petitioner is the Southern Ohio State Executive Offices of Church of God, also an Ohio non-profit corporation. Petitioner Dr. Harold B. Thompson is the State Overseer of that organization which represents, on the state level, the national Church of God of Cleveland, Tennessee. App., p. 10.

The matter in issue concerns real property located in Ohio[3] which is titled in the name of Respondent Fairborn Church and which was purchased with monies raised by the local church, without any material assistance from Petitioners. App., p. 14. Petitioners sought a declaratory judgment from the Ohio Courts that Respondents held the real property in trust for the Church of God, Cleveland, Tennessee and that Respondents were required to obtain permission from Petitioners prior to conveying any interest in the real property. App., p. 9. Petitioners based their claim on certain statements propounded by the General Assembly of the Church of God, as reflected in its Minutes, which prescribed a form of deed to be used in any conveyance of real property to a local church. Specifically, the deed form was to contain the language:

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[2] Pursuant to Rule 29.1 of the Rules of the Supreme Court of the United States, Respondent Fairborn Church of God informs the Court that it has no parent or subsidiary companies.

[3] The property which gave rise to this dispute is an unimproved parcel of land which Respondents proposed to convey to two third parties. It was anticipated that this transaction would not only yield a profit to the Fairborn Church but would result in its acquisition, by exchange, of another unimproved parcel on which it hoped to build a new church for its congregation.

> "The said Local Board of Trustees shall hold title to, manage and control the said real estate for the general use and benefit of the Church of God, having its general headquarters in Cleveland, Tennessee, and for the particular use and benefit of the local congregation of the said Church . . . ."

The Minutes further required the local congregation to seek approval for all conveyances of real property from the State Overseer. App., p. 12.

There is no dispute that the deeds to the property in question did not contain the prescribed language; nor was permission sought from or granted by the State Overseer to convey the property in question. App., pp. 12-13. Upon learning of Respondents' intent to convey a portion of the unimproved land, Petitioners asserted their interest by way of a filing in the County Recorder's Office and then commenced this action for a declaratory judgment that the Fairborn Church held the property in trust for the parent organization. *Id.* at 13.

Each of the lower courts ruled against Petitioners. Applying neutral principles of law, the lower courts held that under Ohio law, Respondent Fairborn Church "holds title to the property in fee simple" and "has the authority to enter into a binding contract to convey the property in question," (App., p. 37) and that no trust, explicit, implied, or constructive, was created under Ohio law in favor of the Church of God, Cleveland, Tennessee App., pp. 22-25. The Supreme Court of Ohio denied Petitioners' motion to certify the record below and dismissed its appeal, "for the reason that no substantial constitutional question exists therein." App., p. 1.

REASONS FOR DENYING THE WRIT

The Petition for Writ of Certiorari presents this Court with no important, unsettled question of federal law; nor do the decisions of the Ohio Courts conflict with the Constitution or applicable decisions of this Court. Instead, in conformity with those decisions, the Ohio Courts resolved this pure property dispute through application of neutral principles of Ohio law. This dispute over an unimproved piece of land was resolved on "objective, well-established concepts of trust and property law," *Jones v. Wolf*, 443 U.S. 595, 603 (1979), and the result reached was correct as a matter of Ohio law. The Ohio Court made no incursions into matters of religious dogma, church polity or religious tenets. Indeed, this action presents no question whose resolution turns on any examination, much less a determination of religious practice or doctrine, or on any determination of the right to exercise religious authority. Petitioners' attempt to cast this matter as one involving issues of "doctrine or polity" finds no basis in the facts in this record or the actions of the Ohio Courts.

I. THIS COURT'S PRIOR DECISIONS ESTABLISH THAT A STATE MAY CONSTITUTIONALLY ADOPT NEUTRAL PRINCIPLES OF LAW AS A MEANS OF ADJUDICATING CHURCH PROPERTY DISPUTES AND DO NOT MANDATE DEFERENCE TO PETITIONERS' ASSERTION OF AN OWNERSHIP INTEREST MERELY BECAUSE PETITIONER VIEWS ITSELF AS A HIERARCHICAL DENOMINATION

A. Use Of Neutral Principles Of Law To Resolve Church Property Disputes Is Constitutionally Permissible.

In *Jones v. Wolf*, 443 U.S. 595, 602-604 (1979), this Court held that a state may adopt neutral principles

of law as a means of adjudicating a church property dispute without contravening the strictures of the First and Fourteenth Amendments to the Constitution. While the First Amendment "prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice," it does not dictate, beyond that, any method which must be used to resolve such disputes, and the states are free to adopt "*any* one of various approaches . . . so long as it involves no consideration of doctrinal matters" such as ritual, liturgy or tenets of faith. *Id.* at 602 (emphasis in original).

Ohio has approved the use of the neutral principles of law standard for resolving church property disputes. *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154, 159, 269 N.E.2d 212, 216, *cert. denied*, 400 U.S. 827 (1970). Adoption of that standard is constitutionally permissible. *Jones v. Wolf*, 443 U.S. at 604.

B. Mandatory Deference To Petitioners' Views Of How This Property Dispute Should Be Resolved Is Not Required.

Petitioners argue that the First Amendment and this Court's prior decisions preclude the use of neutral principles of law to resolve this dispute over ownership of a piece of land and, instead, mandate that the Ohio Courts defer to Petitioners' view that Petitioners own an interest in this land. Petition, pp. 5-10. According to Petitioners, because they view the Church of God, Cleveland, Tennessee, as a hierarchical church and because they assert that the hierarchical structure of the church is mandated by religious belief, the civil courts may not determine purely secular issues of title to land in any manner

inconsistent with the position they take on ownership. Petitioners' argument rests on a fundamental misunderstanding of this Court's prior decisions and a dogged refusal to acknowledge the actual nature of the dispute which was before the Ohio Courts.

As this Court observed in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969), "not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment." The decisions of the Ohio Courts in this case not only do not jeopardize First Amendment values, they do not even implicate them at all, much less to the extent that mandatory deference to religious authority on religious matters is required.

The First Amendment prohibits civil courts from resolving disputes on the basis of religious practice and doctrine. It does not mandate a compulsory deference to church authority whenever the parties to a controversy happen to be religious organizations or church property is involved. *Jones v. Wolf*, 443 U.S. at 605. Deference to religious authorities on religious matters may be mandated only when the resolution of the dispute requires a determination of a religious controversy, or where the right to property is incident to such a determination. If the dispute can be resolved without inquiry into religious doctrine, no constitutional question is raised. *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 368 (1970) (per curiam); *Presbyterian Church v. Hull Church*, 393 U.S. at 449.

This case presents no religious controversy at all, only a dispute over property. App., pp. 26-27. Indeed,

the property giving rise to this dispute is vacant land and does not even contain a house of worship. In order to resolve the dispute, no determination was made or had to be made of matters of religious belief or church polity. There was no schism here, no divided congregation each vying with the other to occupy the house of worship, no attempt by Respondents to withdraw from the denomination, and no conflicting claim as to the right to exercise religious authority. *Id.* This stands in sharp contrast to those situations in which this Court has indicated that the First Amendment constrains the civil courts to defer to religious authority because the resolution of the property dispute requires and, indeed, is incidental to resolution of an underlying religious dispute.

For example, in *Presbyterian Church v. Hull Church*, this Court held that First Amendment values were jeopardized by the Georgia courts' resolution of a property dispute between two local churches and the parent church from whom they had split. The Georgia courts determined the dispute by application of state law under which the right to the church property turned on whether the general church had abandoned the tenets of faith to which it had adhered at the time of the local church's affiliation. In contrast to the dispute at issue here, any resolution of the property dispute in *Hull Church*, under the "departure-from-doctrine" theory applied by the Georgia courts, of necessity required the civil courts "to determine the matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion." *Id.* at 450. *Compare, also, Jones v. Wolf*, 443 U.S. 595 (1979) (remanding for reconsideration and articulation

of rationale used in awarding ownership of church property, deeded to local church, to majority faction, following a schism in the local church, where the church hierarchy had determined that the minority faction represented the true congregation); *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich*, 426 U.S. 696 (1976) (incidentally involving control of church property but essentially a religious dispute concerning the authority within the church to organize dioceses and appoint the church bishops); *Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94 (1952) (resolution of issue of right to use and occupy cathedral dependent upon which group within church hierarchy had religious authority to elect archbishop); *Watson v. Jones*, 80 U.S. 679 (1872) (involving schism within local congregation and question of which of two bodies was to be recognized as the church).

II. THE COURTS BELOW CORRECTLY APPLIED NEUTRAL PRINCIPLES OF LAW TO DETERMINE THIS DISPUTE

The application of neutral principles of law to resolve disputes over church property was described in *Jones v. Wolf*, 443 U.S. at 603, as:

> "[S]ettling a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property and the provisions in the constitution of the general church concerning the ownership and control of church property."

The neutral principles of law approach to resolving such property disputes relies "exclusively on objec-

tive, well established concepts of trust and property law." *Id.* The Court looks to deeds and other title documents, state law and, where relevant, church documents, to determine where title to the property properly resides and whether there is any legally cognizable basis for imposing a trust on the property. *Id.* at 602-603. *Accord: Eldership v. Church of God at Sharpsburg*, 396 U.S. at 370 (Brennan, J. concurring).

That procedure was followed precisely by the Court of Appeals in this case, including reference to the Minutes of the General Assembly and other governing documents of the Church of God. App., pp. 21-22. Applying objective concepts of law, the Court determined that none of those documents created an interest in the property in Petitioners recognized under Ohio law. *Id.* at pp. 22-25.

Petitioners nevertheless argue that the courts below and, in particular, the Court of Appeals, failed to apply these neutral principles in a manner consistent with the First Amendment. Petitioners contend that the Courts failed to consider any portion of the denominational canons, save one, and impermissibly refused to consider the portions of those church documents incorporating religious concepts. These contentions find no support in the Opinion of the Court of Appeals. Moreover, Petitioners' contention that consideration of the canons either mandates a recognition of an ownership interest in the property or compels deference to their interpretation of their ownership interest—and not application of neutral principles of law—is in error.

The Court of Appeals did, in fact, consider church documents in order to determine whether or not they,

in conjunction with the deeds and other secular documents, created any property interest in Petitioners which was legally cognizable under Ohio law. While the Court of Appeals' decision does quote only one portion of the church canons in full text,[4] the opinion is explicit in stating that the church documents, as a whole, were considered insofar as they bore on the issue of ownership of property:

> "[W]e shall consider those passages in the Minutes and Polity documents which may be analyzed on a secular basis . . . . We cannot find that the terms of the Minutes, their supplements or the Polity documents, create an 'express trust' favoring the general church. The terms of the Supplement to the Minutes quoted above provide that the local church and congregation shall hold title to and manage and control the property. Those terms further provide that such ownership shall be discharged for the 'sole and exclusive use and benefit of the Church of God, Cleveland, Tennessee.' At most, these *provisions, and others concerning use of deeds*, create a form of 'equitable charge' on the ownership interest of the local church." App., pp. 22-24. (Emphasis added).

Similarly, in stating that it would not base its determination on purely religious passages contained in

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[4] It is quoted as a portion of the church documents cited by Petitioners "as a basis for their claim" and as an example of a provision which is purely secular in nature. App., p. 21.

those documents,[5] the Court was proceeding in strict compliance with the decisions of this Court mandating that application of neutral principles of law be done without delving into matters of doctrine and religious belief. *Jones v. Wolf*, 443 U.S. at 604; *Presbyterian Church v. Hull Church*, 393 U.S. at 449. The Ohio Court examined church documents to determine whether they formed any basis for a trust or any other ownership interest under Ohio law. That is precisely what the application of neutral principles of law requires. *Jones v. Wolf*, 443 U.S. at 603; *Eldership v. Church of God at Sharpsburg*, 396 U.S. at 370 (Brennan, J. concurring).

At heart, Petitioners' argument, although styled as a claim that neutral principles of law were applied in conflict with the First Amendment, is nothing more than a basic disagreement with the Ohio Courts as to whether the language contained in those documents is sufficient to establish an ownership interest in the property in question. While Petitioners try mightily to cast their disagreement in constitutional terms, in the end they are asserting nothing more than an argument that mandatory deference is required to their understanding of the *legal* significance of language in church documents concerning the ownership of property. That argument has been rejected by this Court.

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[5] As an example of the passages which the Court of Appeals considered purely religious, it quoted the following: "the Church of God stands now as it has always stood, for the whole Bible, rightly divided." App., p. 21. None of the canons which Petitioners cite as germane to a consideration of neutral principles of law (Petition, pp. 15-18) is of this nature, but, instead, fall within the description of the portions of the canons the Court of Appeals explicitly stated that it analyzed.

Jones v. Wolf, 443 U.S. at 605.[6] While *Jones v. Wolf* recognizes that a church can in its constitutional documents, take steps to create an express trust in its favor, the civil courts are "bound to give effect to" those intentions "provided [they are] embodied in some *legally cognizable form.*" *Id.* at 606. (Emphasis added). The simple fact is that the Ohio Courts found as a matter of Ohio law, that whatever Petitioners' intentions, they had failed to establish an interest in the property in a form legally cognizable in Ohio. *In Re Estate of Hoffman*, 175 Ohio St. 363, 367-368, 195 N.E.2d 106, 109-110 (1963). While Petitioners are unhappy with that result, the Ohio Courts' construction of Ohio law gives rise to no substantial federal question, much less one of constitutional proportions.

III. THE OHIO COURTS' DETERMINATION OF OHIO TRUST LAW PRESENTS NO FEDERAL QUESTION FOR THIS COURT TO REVIEW

Petitioners' final argument in support of its petition asserts that the Ohio Courts erred in failing to recognize a constructive trust in their favor under Ohio law. Petition, pp. 25-30. This assignment of error, however, presents no federal question as is necessary

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[6] Petitioners' alternative argument that application of neutral principles of law to this dispute is impermissible, and that mandatory deference is required because this dispute cannot be determined without resolution of a doctrinal issue (Petition, pp. 22-23) is entirely misplaced. This is not a situation where the resolution of a property dispute would require a court to first determine who subscribed to the true tenets of faith of a church or who was the duly appointed archbishop of a church in order to construe the deeds and other documents bearing on title. *Compare, Hull Church*, 393 U.S. at 449; *Serbian Church v. Milivojevich*, 426 U.S. at 709.

to sustain this Court's jurisdiction under 28 U.S.C. § 1257(3).[7]

Moreover, the decisions of the Ohio Courts in this case were correct as a matter of Ohio law. Ohio law does not recognize (and has not recognized since at least 1834) an implied trust under these circumstances, *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154, 160, 256 N.E.2d 212, 217, *cert. denied*, 400 U.S. 827 (1970); *Keyser v. Stansifer*, 6 Ohio 363 (1834), and the imposition of a constructive trust under Ohio law is used, as the Court of Appeals correctly held, as a remedy for unjust enrichment. *Ferguson v. Owens*, 9 Ohio St. 3d 223, 226, 459 N.E.2d 1293, 1295 (1984) (per curiam); *Dixon v. Dixon*, 4 Ohio St. 3d 160, 162 n.4, 447 N.E.2d 756, 757 n.4 (1983). In this case, the Ohio Courts found on the record that there was no unjust enrichment.

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[7] Petitioners' attempt to cast this issue as one of constitutional significance is based on its assumption (rejected by the Ohio Courts) that its canons "clearly place ownership" in the parent church as a matter of Ohio law, and its assertion that the local congregation benefits from its association with the denomination, and has no power to withdraw from the denomination (which Respondents have never sought to do). Petitioners argue that the Ohio Courts' failure (a) to resolve this dispute in Petitioners' favor; (b) to adopt their view of the legal significance under Ohio law of the language of church documents; and (c) to adopt their view of the legal significance of the benefits they believe they confer on the local congregation, violates their First Amendment rights by preventing their free exercise of religion. Petitioners' argument, at best, is nothing more than yet another reiteration of their erroneous contention that mandatory deference to their view of proper ownership of the property is constitutionally mandated.

CONCLUSION

For the reasons stated above, Respondents Fairborn Church of God and Rev. Ancil Carter respectfully request that the Petition for a Writ of Certiorari to the Supreme Court of Ohio be denied.

Dated: January 5, 1990

Respectfully submitted,

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